

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WYNETTE KWOK, on behalf of herself and all others similarly situated,)	
)	
)	
Plaintiff,)	
)	Case No. 1:13 C 2070
)	
v.)	
)	Hon. Milton I. Shadur
)	
DELTA AIR LINES, INC.,)	
)	
)	
Defendant.)	

**DEFENDANT DELTA AIR LINES INC.'S
MOTION TO DISMISS AND MOTION TO TRANSFER VENUE**

Defendant Delta Air Lines, Inc. (“Delta”), by and through its undersigned counsel, hereby moves under Federal Rule of Civil Procedure 12(b)(6) to dismiss with prejudice Plaintiff’s Class Action Complaint for failure to state a claim. In the event the Court denies Delta’s motion to dismiss, Delta respectfully requests that the Court transfer this action to the United States District Court for the Northern District of Georgia, pursuant to 28 U.S.C. § 1404(a).

1. Plaintiff alleges that Delta breached the terms of its SkyMiles® frequent-flier program by failing to award frequent-flier miles based on “actual miles flown.” But Plaintiff’s Complaint fails to identify any breach of contract by Delta. To the contrary, the language the Complaint quotes from the contract establishes that Delta agreed to credit miles according to the “distance from origin to destination” for each flight. And Plaintiff concedes that Delta awarded mileage to Plaintiff and its other SkyMiles members by applying that measure. As further detailed in the attached memorandum in support of this motion, Plaintiff has pleaded herself out

of court, and her Complaint should be dismissed, with prejudice, for failure to state a claim.

2. If this Court were to deny Delta's motion to dismiss, Delta requests that, at that juncture, the Court transfer the action to the Northern District of Georgia under 28 U.S.C. § 1404(a). As this Court suggested in its *sua sponte* Memorandum of March 20, 2013 (Dkt. No. 7), the Northern District of Georgia is a more convenient forum for the parties and witnesses than the Northern District of Illinois, and a transfer would serve the interests of justice. Neither party to this action resides in Illinois, none of the flights specified in the Complaint departed from or arrived in any airport in this district, and virtually all witnesses and relevant evidence are located in Atlanta, Georgia.

3. For these reasons, Delta respectfully submits that the Complaint should be dismissed, with prejudice, for failure to state a claim, or, if Delta's motion to dismiss is denied, transferred to the Northern District of Georgia.

Dated: April 22, 2013

Respectfully submitted,

/s/ Gabor Balassa, P.C.

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I, Gabor Balassa, P.C., hereby certify that on April 22, 2013, I caused a copy of the foregoing, DEFENDANT DELTA AIR LINES, INC.'S MOTION TO DISMISS AND MOTION TO TRANSFER VENUE, to be served on all counsel of record via the court's CM/ECF System:

/s/ Gabor Balassa, P.C.

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